

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6802**

**BILL NUMBER: HB 1122**

**NOTE PREPARED: Feb 2, 2010**

**BILL AMENDED: Jan 25, 2010**

**SUBJECT:** Abatement of Vacant or Abandoned Structures.

**FIRST AUTHOR:** Rep. Riecken

**FIRST SPONSOR:** Sen. Wyss

**BILL STATUS:** As Passed House

**FUNDS AFFECTED: X GENERAL  
DEDICATED  
FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) *Local Enforcement Authority*- The bill provides that the court or a local enforcement authority may find that residential real estate is abandoned for purposes of the statute that allows a judgment or decree of sale to be executed on the date a judgment of foreclosure or decree of sale is entered, in the case of abandoned residential real estate. (Current law provides for only the court to make a finding of abandonment.)

*Presuit Notice*- The bill combines two separate Indiana Code provisions concerning the presuit notice required in residential foreclosure proceedings into one section. The bill repeals one of the provisions being combined. The bill provides that the presuit notice must inform the debtor that if the creditor obtains a foreclosure judgment, the debtor has a right to do the following before a sheriff's sale is conducted: (1) appeal a finding of abandonment by a court or an enforcement authority. (2) redeem the real estate from the judgment. (3) retain possession of the property, subject to certain conditions.

*Abatement Notice/Order to Foreclosure Judgment Holder*- The bill provides that a county or municipality that adopts the statute concerning the abatement of vacant structures and abandoned structures may issue an abatement notice and order to a foreclosure judgment holder in a residential mortgage foreclosure proceeding if the foreclosure judgment holder has not filed a praecipe to initiate a sheriff's sale within 180 days after the entry of the foreclosure judgment. (Current law provides for the issuance of an abatement notice and order only with respect to the owner of the property.) The bill provides that an abatement notice and order may order the owner or foreclosure judgment holder to perform certain actions that may be ordered under the unsafe building law. The bill provides that an enforcement authority may administer and enforce the unsafe building law and the law concerning the abatement of vacant structures and abandoned structures in conjunction with the law concerning the removal of weeds and rank vegetation and with certain other laws.

*Not Liable-* The bill provides that a foreclosure judgement holder that performs, or causes to be performed, any work or action required by an abatement notice or order issued under the law concerning the abatement of vacant structures and abandoned structures is not liable to the property owner, the enforcement authority, or any other person in connection with the work performed.

*Civil Penalty Limit Timing-* The bill specifies that for purposes of the limits on the amount of civil penalties that can be imposed in a year for structures that remain vacant or abandoned for specified periods after the issuance of an abatement notice and order, a year is measured from the date of the order.

*Praeceptum Filed to Avoid Civil Penalties-* The bill provides that if the abatement notice and order has been issued against a foreclosure judgment holder, the foreclosure judgment holder may avoid the civil penalties that would otherwise apply by filing, not later than 180 days after the date of issuance of the abatement notice and order, a praecipe with the county clerk to initiate a sheriff's sale.

*Cancellation of Sheriff's Sale-* The bill provides that if a foreclosure judgment holder files a praecipe to initiate a sheriff's sale within 180 days after the issuance of the abatement notice and order and subsequently cancels the sale, the foreclosure judgment holder is liable for: (1) any civil penalties that otherwise would have applied during the 180-day period; (2) any civil penalties that accrue after the 180-day period; and (3) certain costs incurred by the sheriff in preparing for the sheriff's sale before its cancellation.

*Civil Penalty Exceptions-* The bill provides that a foreclosure judgment holder is not liable for civil penalties that would otherwise apply upon cancellation of a sheriff's sale, if the sale is canceled because: (1) the owner of the vacant structure or abandoned structure has filed for bankruptcy, or the sale is otherwise prohibited by federal bankruptcy law; (2) the sale is prohibited by a federal or state moratorium on foreclosure actions or proceedings; or (3) the foreclosure judgment holder and the owner of the vacant structure or abandoned structure have entered into a written agreement for the refinancing, restructuring, or workout of the owner's indebtedness, and the agreement is filed with the clerk of the court.

*Deposit of Civil Penalties-* The bill provides that civil penalties collected for structures that remain vacant or abandoned shall be deposited in: (1) the local unsafe building fund; or (2) another fund or account specified in the rules and procedures adopted by the legislative body. The bill provides that if any civil penalties assessed against a foreclosure judgment holder remain unpaid after a subsequent sheriff's sale of the property, the unpaid civil penalties shall be paid from the proceeds of the sheriff's sale.

*Amending Rules and Procedures-* The bill requires a county or municipality that, before July 1, 2010, has adopted: (1) the statute concerning the abatement of vacant structures and abandoned structures; and (2) rules and procedures to enforce the statute; to amend its rules and procedures not later than August 1, 2010, to comply with changes to the statute.

**Effective Date:** Upon passage; July 1, 2010.

### **Explanation of State Expenditures:**

**Explanation of State Revenues:** (Revised) *Local Enforcement Authority-* This provision could increase the number of civil suits filed. If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record

keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

**Explanation of Local Expenditures:** The bill may increase the number of sheriffs' sales that occur if foreclosure judgment holders were required to make improvements to a property or face civil penalties.

*Unsafe Building Fund-* Local unsafe building funds could be used to cover the costs to carry out the abatement of vacant and abandoned structures.

(Revised) *Local Enforcement Authority-* A local enforcement authority (which may be the entity designated by local ordinance to enforce unsafe building code, or in Marion County the Department of Metropolitan Development) would be allowed to bring suit in court as an additional remedy to administer and enforce unsafe building law.

**Explanation of Local Revenues:** (Revised) *Summary-* The bill would require foreclosure judgement holders to be liable for existing civil penalties for leaving a building abandoned or vacant. (See *Additional Civil Penalties* below.) If foreclosure judgement holders do not initiate a sheriff's sale or make the required improvements to the properties in question, with certain exceptions, local revenues could increase if more civil penalties are assessed.

*Unpaid Civil Penalties-* For sheriff's sales that occur after June 30, 2010, the amount of unpaid civil penalties collected from a foreclosure judgement holder would be transferred to the county treasurer.

*Avoidance of Civil Penalties-* If within 180 days of the issuance of an abatement notice to a foreclosure judgement holder, the holder files for a praecipe for a sheriff's sale, and the sale is carried out, any and all civil penalties assigned to the holder would be waived. However, if the sale were cancelled by the holder and improvements had not occurred, then the penalties would be reinstated plus any additional penalties that would have accrued. Additionally, the holder could be penalized for costs to the sheriff to prepare the sale, costs outside administrative fees, and costs that would have been payable by using the proceeds of the sale.

*Additional Civil Penalties-* The bill specifies that the civil penalty is \$5,000 for the first and each subsequent 90-calendar-day period that a building remains abandoned or vacant (after the first year following the issuance of the abatement notice order). Current law allows the assessment of a civil penalty on property owners at the following amounts.

<b>Penalties for Structure Remaining Abandoned or Vacant</b>	
<b>Time Period (Current Law)</b>	<b>Civil Penalty (Current Law)</b>
Second 90-day Period	\$1,000
Third 90-day Period	\$1,500
Fourth and Subsequent Periods	\$2,000

However, under current law, total civil penalties may not exceed \$5,000 per year. The bill would change the effective date of when that year begins to the date an abatement notice and order is issued.

(Revised) *Local Enforcement Authority*- If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

**State Agencies Affected:**

**Local Agencies Affected:** Trial courts, counties, and municipalities.

**Information Sources:**

**Fiscal Analyst:** Chris Baker, 317-232-9851.